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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

8 DONNA TUPPER,

9 Plaintiff,

10 v.

11 MICHAEL J. ASTRUE, Commissioner of  
12 Social Security,

12 Defendant.  
13

Case No. C11-556-JCC-BAT

**REPORT AND  
RECOMMENDATION**

14 Donna Tupper filed a pro se complaint seeking review of the denial of her Supplemental  
15 Security Income application. Ms. Tupper applied for benefits on August 6, 2007, alleging  
16 disability as of January 1, 2004. After conducting a hearing on September 30, 2009, the ALJ  
17 found Ms. Tupper had the following severe impairments: asthma, generalized anxiety disorder,  
18 depressive disorder, and polysubstance dependence disorder in remission. The ALJ found despite  
19 these impairments, Ms. Tupper retained the ability to perform light work with some limitations,  
20 and was not disabled because there were jobs in the national economy that she could perform.  
21 Tr. 13-19. As the Appeals Council denied Ms. Tupper's request for review, the ALJ's decision  
22 is the Commissioner's final decision.

23 Ms. Tupper contends the ALJ erred by not finding any facts to support the denial of

1 benefits. Dkt. 25. In response, the Commissioner filed a motion to remand for further  
2 proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. 32. The Commissioner  
3 submits the case should be remanded for further proceedings because Ms. Tupper's mental  
4 impairments need to be reassessed in light of the opinions of the Alejandra Suarez, Ph.D., which  
5 were submitted to the Appeals Council after the ALJ's decision (TR. 208-17); testimony from a  
6 medical expert is necessary to assist the ALJ in reassessing Ms. Tupper's mental impairments,  
7 including her substance abuse; and the ALJ must determine whether to reopen the dismissal of  
8 Ms. Tupper's request for a hearing on her 2004 SSI application (TR. 67-69), pursuant to Social  
9 Security ruling (SSR) 91-5p, *available at* WL 208067. Dkt. 32 at 6-7.

10 As Ms. Tupper has not opposed the motion and as there appear to be outstanding issues  
11 that need to be resolved before a disability determination can be made, the Court recommends  
12 the motion be **GRANTED** and the case be **REVERSED** and **REMANDED** for further  
13 administrative proceedings pursuant to pursuant to sentence four of 42 U.S.C. § 405(g) as  
14 follows:

- 15 (1) The ALJ shall reassess Ms. Tupper's mental impairments, and include in that  
16 reassessment the opinions of Alejandra Suarez, Ph.D., which were submitted to  
17 the Appeals Council;
- 18 (2) The ALJ shall develop the medical record, obtain testimony from a medical  
19 expert to reassess Ms. Tupper's mental impairments, and address Ms. Tupper's  
20 substance abuse;
- 21 (3) The ALJ shall determine whether to reopen the dismissal of Ms. Tupper's request  
22 for a hearing on her 2004 SSI application pursuant to Social Security ruling SSR  
23 91-5p.

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2       Objections, if any, to this Report and Recommendation must be filed and served no later  
3 than **December 23, 2011**. The matter shall be ready for the Court's consideration on **December**  
4 **28, 2011**. Objections and responses shall not exceed twelve pages. The failure to timely object  
5 may affect your right to appeal. A copy of this Report and Recommendation shall be provided to  
6 the parties and to the Honorable John C. Coughenour.

7       DATED this 9th day of December, 2011.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge